

[REDACTED]
[REDACTED]
[REDACTED]
MAY 19 1994

CERTIFIED MAIL

Dear Sir:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(4) of the Internal Revenue Code and have determined that you do not qualify for tax exemption under that section. Our reasons for this conclusion and the facts on which it is based are explained below.

The information submitted indicates that you were incorporated on [REDACTED] under the non-profit laws of the State of [REDACTED]. The purpose for which you were organized is to operate a condominium association in which the buildings and grounds which encompass the condominium are maintained.

An individual must own one or more offices in the buildings in order to be a member of the Association. The organization collects dues for cleaning and maintaining the buildings and the grounds. It also pays real estate taxes and utilities.

Section 501(c)(4) of the Code provides for the recognition of civic leagues, social welfare organizations, or other organizations, not organized for profit, but operated exclusively for the promotion of social welfare.

Section 1.501(c)(4)-1(a)(2)(i) of the Federal Income Tax Regulations provides that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one which is operated for the purpose of bringing about civic betterment and social improvements.

Revenue Ruling 74-99, published in Cumulative Bulletin 1974-1, on page 131, modified Revenue Ruling 72-102 by stating guidelines under which a homeowners' association could qualify for exemption under section 501(c)(4) of the Code. One guideline is that a homeowners' association must serve a community which bears a reasonable recognizable relationship to an area identified as governmental in order to qualify under section 501(c)(4).

[REDACTED]

This ruling reads in part: "A community within the meaning of section 501(c)(4) and the regulations is not simply an aggregation of homeowners bound together in a structural unit formed as an integral part of a plan for the development of a real estate division and the sale of homes therein. Although an exact delineation of the boundaries of a "community" contemplated by section 501(c)(4) is not possible, the term as used in that section has traditionally been construed as having reference to a geographical unit bearing a reasonable recognizable relationship to an area ordinarily identified as a governmental subdivision or a unit or district thereof."

Revenue Ruling 74-99 states that "...Revenue Ruling 72-102 was intended only to approve ownership and maintenance by homeowners' associations of such areas as roadways and parklands, sidewalks and street lights, access to or for the use and enjoyment of which is extended to members of the general public, as distinguished from controlled use or access restricted to the members of the homeowners' associations.

Examples of common areas are roads, sidewalks, street lights and parklands. You restrict the use of your common areas to your members who own or rent lots in the development. Access to or the use and enjoyment of the common areas is not extended to the general public. Your common areas are for the private use of the members of your organization.

Based on the information submitted, we have determined that your organization is operating in essentially the same manner as the organization described in Revenue Ruling 74-99 and therefore we hold that you are primarily organized and operated to provide services for the personal benefit of your members and not primarily for promoting in some way the common good and general welfare of the community. Any benefits to the community are not sufficient to meet the requirement of the regulations that the organization be operated primarily for the common good and general welfare of the people of the community.

One of the purposes of Revenue Ruling 74-99 is to preclude recognition of exemption of homeowners' associations that serve private rather than public interests. Your services do not benefit a community because they are limited to the members of your housing development. Revenue Ruling 72-102, published in Cumulative Bulletin 1972-1, on page 149, states that a nonprofit organization formed to preserve the appearance of a housing development and to maintain streets, sidewalks and common areas for use of residents is exempt under 501(c)(4). Membership is required of all owners of real property in the development and assessments are levied to support the organizations' activities. It was held that by maintaining the property normally maintained by a municipal government, the organization served the common good and general welfare of the community.

[REDACTED]

Revenue Ruling 74-17, published in Cumulative Bulletin 1974-1, on page 130, concerns an association formed by unit owners of a condominium housing project which was operated to provide for the management, maintenance and care of the common areas of the project. Because the essential structure of a condominium association involves ownership in common by all unit owners of common areas and the maintenance and care of private property, it was held that the organization could not be recognized as tax exempt because the activities of the association constituted the provision of private benefit for the unit owners.

The rights, duties, and privileges of members of an association of unit owners in a condominium property derive from, and are established by, statutory and contractual provisions and are inextricably and compulsorily tied to the owners acquisition and enjoyment of their property interests in the condominium.


Condominium type ownership by its very nature necessarily entails ownership in common by all unit owners of common areas or elements supportive to the individual units in a structural and/or functional sense. Thus, any maintenance or care of such common areas or elements constitutes private benefit to the individual members as opposed to promoting the common good and general welfare of the people of the community.

It is held that the direct economic benefit from your activities is for the benefit of your members as individuals and not for the direct benefit of the community as a whole. Accordingly, you are not primarily engaged in promoting the common good and general welfare of the people of the community.

Your organization fails to meet the operational test of section 501(c)(4). Your activity of administering to the condominium, establishing the means and methods of collecting assessments, and arranging for the management of the condominium are not activities described in section 501(c)(4) of the Code.

Your attention is called to section 528 of the Internal Revenue Code which was added by the Tax Reform Act of 1976. This section provides that, in certain circumstances, a non-exempt homeowners' association may elect not to taxed on its "exempt function income" which includes membership dues, fees or assessments from owners of real property. The election is made by filing Form 1120H. If you determine that your organization qualifies under section 528, you may find it beneficial to make this election.

Therefore, we have concluded that you do not qualify for exemption from Federal income tax as an organization described in section 501(c)(4) of the Internal Revenue Code. In accordance with this determination, you are required to file Federal income tax returns on Form 1120.



If you do not agree with our determination, you may request consideration of this matter by the Office of Regional Director of Appeals. To do this you should file a written appeal as explained in the enclosed Publication 892. Your appeal should give the facts, law, and any other information to support your position. If you want a hearing, please request it when you file your appeal and you will be contacted to arrange a date. The hearing may be held at the regional office, or, if you request, at any mutually convenient district office. If you will be represented by someone who is not one of your principal officers, he or she will need to file a power of attorney or tax information authorization with us.

If you don't appeal this determination within 30 days from the date of this letter, as explained in Publication 892, this letter will become our final determination on this matter.

Appeals submitted which do not contain all the documentation required by Publication 892 will be returned for completion.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,



District Director

Enclosure: Publication 892